IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2052 OF 1999

Prakash L. Shelar & 6 Ors. ..Petitioner.

Vs.

Air India Ltd. & 4 Ors. ..Respondents.

Mr.Susheel Mahadeshwar, Advocate for the Petitioner.

Mrs. Pooja Kulkarni i/b.Bhasin & Co., for Respondent No.1.

Mr.Suresh Kumar with Mr.M.S.Karnik with Mr.Y.S.Bhate with Mr.D.A.Dubey with Mr.Y.R.Mishra, Advocates for the Respondent Union of India.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 4th FEBRUARY, 2005

P.C. :
Heard.

2. In paragraph 122 of the *Steel Authority of India Ltd. vs. National Union Water Front Workers, 2001 AIR SCW 3574*, the Apex Court held thus :

> "122. The upshot of the above discussion is outlined thus :
>
> (1)(a) Before, January 28, 1986, the determination of the question whether Central Government or the State Government, is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression

"appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry: or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government : otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government.

(b) After the said date in view of the new definition of that expression, the answer, to the question referred to above, has to be found in Cl. (a) of s.2 of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by railway company; or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated; will be the appropriate Government.;

(2)(a) A Notification under S.10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government :

(1) After consulting with the Central Advisory Board or the State Advisory Board, as the case may be,

and;

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question; and

(ii) other relevant factors including those mentioned in sub-section (2) of S.10 ;

(b) inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the aforesaid requirements of S.10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said Notification on or before the date of this judgment, shall be called in question in any Tribunal or Court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither S.10 of the CLRA nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of S.10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently, the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

(4) We overrule the judgment of this Court in Air India’s case (1997 AIR SCW 430 : AIR 1997 SC 645 : 1997 Lab IC 365) (supra) prospectively and declare that any direction issued by

any industrial adjudicator/any Court including High Court, for absorption of contract labour following the judgment in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under S.10(1) of the CLRA Act prohibiting employment of contractor labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to, consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various; beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under S.10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such

> process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers as the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

3. In the light of the above decision in the case of Steel Authority of India Ltd., the Petitioner has already approached the authorities under the Industrial Disputes Act for making a reference under section 10 of the said Act and the reference has been made under section 10 to the Industrial Tribunal.

4. The Petitioner shall apply to the Industrial Tribunal for interim relief within a period of four weeks from the date of the receipt of the notice from the Industrial Tribunal.

5. The Tribunal is directed to decide the application for interim relief as expeditiously as possible and, in any event, within a period of eight weeks from receipt thereof.

6. Till the application for interim relief is decided by the Industrial Tribunal and for a period of four weeks thereafter, the Respondents are directed to abide by the interim relief granted by this Court.

7. It is needless to say that the application for interim reliefs shall be disposed of on its own merits, without being influenced by any orders being passed by this Court.

8. In the meantime, it would be open to the Respondents to change the contractor where the contract labour is not abolished but the new contractor shall engage the same workers, subject to the orders of the Industrial Tribunal that may be passed as per paragraph 5.

9. All contentions of the parties on merits are left open, to be agitated before the Industrial Tribunal.

10. The Industrial Tribunal is expected to hear and decide the reference expeditiously.

11. Rule is accordingly disposed of.

Certified copy expedited.